

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

**Case No.:** 2:23-cv-01609-MWF-BFM **Date:** June 13, 2023

**Title:** Guillermo Rene Rivera v. B. Birkholz

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Present: The Honorable: Brianna Fuller Mircheff, United States Magistrate Judge

Christianna Howard  
Deputy Clerk

N/A  
Court Reporter / Recorder

Attorneys Present for Petitioner:  
N/A

Attorneys Present for Respondent:  
N/A

**Proceedings: (In Chambers) Order to Show Cause Why Motion to Dismiss Should Not Be Granted**

On March 3, 2023, Petitioner—a prisoner in federal custody—filed an Emergency Petition for Release Pursuant to 28 U.S.C. § 2241. (ECF No. 1.) On March 7, 2023, the previously-assigned Magistrate Judge issued an Order Requiring Response to Petition (ECF No. 4), along with an Order Expediting Briefing Schedule (ECF No. 5). Respondent was ordered to file his response to the Petition, or a Motion to Dismiss, within 30 days after entry of the March 7, 2023, Order. (ECF No. 5). Petitioner’s time to file his “optional reply” to the Motion to Dismiss was shortened to 21 days after the filing of the Motion to Dismiss. (ECF Nos. 4, 5.)

On April 6, 2023, Respondent filed a Motion to Dismiss the Petition, alleging that the Petition should be dismissed for failure to exhaust administrative remedies, and because Petitioner is not entitled to the application of First Step Act time credits because the FSA expressly bars the application of FSA time credits to inmates—like Petitioner—with a final order of removal. (Mot. at 7.)

On May 11, 2023, the Court ordered Petitioner to respond to the Motion to Dismiss, either by filing an opposition or, if he agreed that dismissal was

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warranted, a notice of voluntary dismissal. As of the date of this Order, Petitioner has not filed an opposition to the Motion to Dismiss, a notice of voluntary dismissal, or otherwise responded to the Court's prior order. His deadline to do so is passed. Given Petitioner's pro se status, however, the Court will give him one last chance.

Respondent is correct that individuals with a final order of removal are generally precluded from receiving Earned Time Credit. 18 U.S.C. § 3632(d)(4)(E)(i). Neither the Court nor the Bureau of Prisons has the authority to disregard that rule. In this case, Respondent has attached to its Motion to Dismiss a document that purports to be Petitioner's final order of removal. If there is a reason that Respondent's Motion to Dismiss should not be granted, now is the time for Petitioner to say something.

**No later than July 5, 2023**, Petitioner is ordered to show cause why the Motion to Dismiss should not be granted and/or why this case should not be dismissed for lack of prosecution and/or for failure to comply with Court orders. Filing of an opposition to the Motion to Dismiss shall be deemed compliance with this Order to Show Cause. **Petitioner is again advised that failure to timely oppose the Motion to Dismiss may be construed as consent to the granting of the Motion to Dismiss and will result in dismissal of the action.** Local Rule 7-12.

**IT IS SO ORDERED.**

cc: Guillermo Rene Rivera, pro se  
Derek Ramon Flores, AUSA

Initials of Preparer: ch